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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Edward D. Binkowski

Serial No. 78290485

Molly B. Markley of Young & Basile, P.C. for Edward D. Binkowski.

Dominick J. Salemi, Trademark Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Hairston, Grendel and Rogers, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Edward D. Binkowski has appealed from the final refusal of the trademark examining attorney to register GRIP-N-RIP-IT as a mark for a "training device for learning to play golf."¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on

¹ Application Serial No. 78290485, filed August 21, 2003 and asserting a bona fide intention to use the mark in commerce.

the ground that applicant's mark so resembles the registered mark GRIPP & RIPP for, inter alia, "golf training aids and golf swing aids,"² that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the examining attorney have filed briefs; an oral hearing was not requested.

In determining whether there is a likelihood of confusion between two marks, we must consider all relevant factors as set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, applicant does not dispute that its training device for learning to play golf and registrant's golf training aids and golf swing aids are closely related products. Further, such goods would be offered in the same channels of trade, e.g., golf and

² Registration No. 2,799,079 issued December 23, 2003. Although the registration covers other goods, the refusal is based on "golf training aids and golf swing aids."

sporting goods retailers to the same class of consumers, namely, persons who are learning to play golf. Thus, if such goods were to be marketed under the same or similar marks, confusion as to the source or sponsorship thereof would be likely to occur.

Turning then to the marks, we must determine whether applicant's mark and registrant's mark, when compared in their entireties are similar or dissimilar, in terms of sound, appearance, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

We find that, when considered in their entireties, applicant's mark GRIP-N-RIP-IT and the cited mark GRIPP & RIPP are highly similar in sound, appearance, connotation and commercial impression. Here, there can be no doubt that GRIPP and RIPP are merely variations of "grip" and

"rip", respectively, and "N" and "&" are equivalents.

Thus, the marks share a strong similarity in appearance and pronunciation. The fact that applicant's mark adds the word IT is not sufficient to avoid likelihood of confusion. Further, given the fallibility of memory, consumers are not likely to note and thereby distinguish the marks on the basis of the presence or absence of hyphens between the terms and/or the spelling of GRIP/GRIPP and RIP/RIPP.

It must be remembered that under actual marketing conditions, consumers do not have the luxury of making side-by-side comparisons of the marks. See *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980).

In addition to the similarities in appearance and pronunciation, the marks have the identical connotation, that of positioning one's hands together on a golf club and swinging. Overall, the respective marks consequently project the same general commercial impression.

Applicant argues that the words "grip" and "rip", as applied to golf-related products, are so frequently used in connection with such products that the fact that both marks contain these words is not a sufficient basis for finding a likelihood of confusion. In support of its contention, applicant submitted the results of a search of "Google" for the query "grip and golf." The results state that 858,000

"hits" were found. Applicant has submitted 30 of the hits and representative samples are shown below:

WEB PAGE Grip It & Rip It Golf Tournament 2004
6th Annual Lincoln Family YMCA Grip it & Rip it Golf Tournament - Why our event is special: This is the 6th year for the YMCA Grip It & Rip It Golf Tournament!...
www.valleymca.org/events

Golf Towels and Cleaning Products
Grip to RIP is a revolutionary new cleaning cloth that improves your grip and game while removing dust, dirt, lint and oil from the grip of your golf clubs.
www.golfhelp.com/search

CNNSI.com - GOLFONLINE - 2 Instruction - GOLFONLINE Pro Tip Video...
Grip it to rip it PGA National Director of Instruction Mike Adams and partner TJ Tomasi discuss how a proper grip is essential to hitting solid golf shots...
www.cnnsi.com/golfonline/instruction/news/2002

The Grip It N Rip It Golf Tournament
"Grip It-N-Rip It." The 16th Annual IPC "Grip-it 'n' Rip-It" 4 man golf scramble will be held on Monday May 24, 2004.
www.indepres.org/gym/golf.htm

Generally, hits which consist merely of an internet web page address and a brief excerpt from a page, as those shown above, warrant little probative value. In this case, the hits do not show the existence of any marks consisting of "grip" and/or "rip" or that the public is familiar with them. Nonetheless, we recognize that the terms "grip" and "rip" have suggestive significance as applied to golf-related products. However, even if marks which contain the words "grip" and "rip" are considered to be weak, due to a

high degree of suggestiveness conveyed by such terms, the registered mark is still entitled to protection where confusion is likely. In re Colonial Stores, 216 USPQ 793, 795 (TTAB 1982) ["even weak marks are entitled to protection against registration of similar marks" for identical services]. See also, In re The Clorox Co., 578 F.2d 305, 198 USPQ 337, 341 (CCPA 1978) [ERASE for a laundry soil and stain remover held confusingly similar to STAIN ERASER, registered on the Supplemental Register, for a stain remover].

Here, the words "grip/gripp" and "rip/ripp," as used in both marks, convey the same suggestive significance, and the additional word IT in applicant's mark does not change the meaning or the commercial impression of the marks. In short, notwithstanding any weakness in the words "grip" and "rip," the registered mark is still substantially similar in sound, appearance, connotation and commercial impression to applicant's mark.

Finally, even if we had doubts about the issue of likelihood of confusion, we must resolve them in registrant's favor. In re Pneumatiques, Caoutchouc Manufacture et Platitudes Kleber-Colombes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Accordingly, we conclude that persons familiar with the registered mark GRIPP & RIPP for golf training aids and golf swing aids, would be likely to believe, upon encountering the substantially similar mark GRIP-N-RIP-IT for a training device for learning to play golf, that such closely related goods emanate from or are associated with or sponsored by the same source.

Decision: The refusal to register under Section 2(d) is affirmed.